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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2014-0141: FRL – 9913-47-Region-10]

Approval and Promulgation of Implementation Plans; Washington: General Regulations for Air Pollution Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Washington State Implementation Plan (SIP) submitted by the Department of Ecology (Ecology) on January 27, 2014. These revisions were submitted in accordance with the requirements of section 110 of the Clean Air Act (hereinafter the Act or CAA), which requires states to develop a plan for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standards (NAAQS). The revisions update the general air quality regulations that apply to sources within Ecology's jurisdiction, including the minor new source review permitting program. Ecology's submittal also includes regulations covering the major source Prevention of Significant Deterioration (PSD) and the major Nonattainment New Source Review (NNSR) permitting program; however the EPA intends to address the major source permitting regulations in separate actions.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2014-0141,

by any of the following methods:

- A. www.regulations.gov: Follow the on-line instructions for submitting comments.
- B. Mail: Jeff Hunt, EPA Region 10, Office of Air, Waste and Toxics (AWT-107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101
- C. E-mail: R10-Public_Comments@epa.gov
- D. Hand Delivery: EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Jeff Hunt, Office of Air, Waste and Toxics, AWT - 107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2014-0141. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot

contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: For information on the New Source Review permitting program, please contact Donna Deneen at (206) 553-6706 or deneen.donna@epa.gov. For information on the Washington SIP in general, please contact Jeff Hunt at (206) 553-0256, hunt.jeff@epa.gov, or by using the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we”, “us” or “our” are used, it is intended to refer to the EPA.

Table of Contents

- I. Purpose of Proposed Action
- II. Background for Proposed Action
- III. Washington SIP Revisions
 - A. WAC 173-400-020, Applicability.
 - B. WAC 173-400-030, Definitions.
 - C. WAC 173-400-040, General Standards for Maximum Emissions.
 - D. WAC 173-400-050, Emission Standards for Combustion and Incineration Units.
 - E. WAC 173-400-060, Emission Standards for General Process Units.
 - F. WAC 173-400-070, Emission Standards for Certain Source Categories.
 - G. WAC 173-400-081, Startup and Shutdown and WAC 173-400-091, Voluntary Limits on Emissions.
 - H. WAC 173-400-100, Registration Program.

- I. WAC 173-400-105, Records, Monitoring, and Reporting.
- J. Minor New Source Review: WAC 173-400-110; WAC 173-400-111; WAC 173-400-112; WAC 173-400-113; WAC 173-400-036; and WAC 173-400-560.
- K. WAC 173-400-116, Increment Protection.
- L. WAC 173-400-117, Special Protection Requirements for Federal Class I Areas.
- M. WAC 173-400-118, Designation of Class I, II, and III Areas.
- N. WAC 173-400-131, Issuance of Emission Reduction Credits.
- O. WAC 173-400-136, Use of Emission Reduction Credits (ERC).
- P. WAC 173-400-151, Retrofit Requirements for Visibility Protection.
- Q. WAC 173-400-171, Public Notice.
- R. WAC 173-400-175, Public Information.
- S. WAC 173-400-200, Creditable Stack Height and Dispersion Techniques.
- IV. The EPA's Proposed Action
 - A. Rules to Approve into the SIP
 - B. Rules to Remove from the SIP
 - C. Rules on which No Action is Taken
 - D. Scope of Proposed Action
- V. Statutory and Executive Order Reviews

I. Purpose of Proposed Action

The purpose of this action is to propose approval of revisions to Washington's SIP submitted to the EPA by Ecology on January 27, 2014. The SIP submittal revises and amends portions of Chapter 173-400 of the Washington Administrative Code (WAC) currently in the Federally-approved Washington SIP (40 CFR part 52, subpart WW). This action proposes to update the SIP to reflect many of the changes to Chapter 173-400 WAC, last revised November 28, 2012. Ecology did not submit to the EPA those sections of Chapter 173-400 WAC that have not changed since the last SIP approval by the EPA. Ecology also did not submit certain provisions of Chapter 173-400 WAC because they are not related to the criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, or not related to the requirements for SIPs under section 110 of the CAA. The proposed SIP revisions covered by this action are explained in more detail below, along with an evaluation of how these rules comply with the CAA requirements for SIPs. Also included is a discussion of how the

EPA intends to act on the remainder of Ecology's submittal, covering the major source PSD and NNSR specific regulations in separate actions.

II. Background for Proposed Action

Title I of the CAA, as amended by Congress in 1990, specifies the general requirements for states to submit SIPs to attain or maintain the NAAQS and the EPA's actions regarding approval of those SIPs. With this action we are proposing approval of many revisions to the SIP, including housekeeping changes such as updated references, renumbering, and clarifying wording, as well as more substantive changes. Further background on and analysis of the substantive changes is provided below.

III. Washington SIP Revisions

A. WAC 173-400-020, Applicability.

As described in the Ecology submittal, Chapter 70.94 Revised Code of Washington (RCW), *Washington Clean Air Act* directs Ecology to establish regulations to implement the state air quality programs and requirements. In the case of Chapter 173-400 WAC, the Ecology regulations apply statewide, except where a local clean air agency has implemented its own regulations.¹ Chapter 70.94 RCW also specifies that the local agency and Ecology regulations do not apply to the energy facilities under the purview of the Energy Facilities Site Evaluation Council (EFSEC). EFSEC is given primary authority for the permitting of energy projects listed in Chapter 80.50 RCW, and the EPA-approved EFSEC regulations are also contained in the SIP under 40 CFR part 52, subpart WW. In the case of permitting stationary sources of air pollution, Ecology's submittal states that the intent of the Washington Clean Air Act is that local clean air agencies, EFSEC, and Ecology have primary responsibility for implementing programs and

regulations to control air pollution in their respective jurisdictions. The EPA also notes that under the SIP-approved provisions of WAC 173-405-012, WAC 173-410-012, and WAC 173-415-012, Ecology has statewide, direct jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants. The revised language of WAC 173-400-020 states:

“(1) The provisions of this chapter shall apply statewide, except for specific subsections where a local authority has adopted and implemented corresponding local rules that apply only to sources subject to local jurisdiction as provided under RCW 70.94.141 and 70.94.331.”

Because under revised WAC 173-400-020(1), the applicability of Chapter 173-400 WAC in a local clean air agency’s jurisdiction depends on whether the local agency has adopted and is implementing corresponding local rules that apply only to sources subject to local jurisdiction, the EPA’s proposed approval of the submitted Chapter 173-400 WAC provisions is limited to only those counties where there is no local clean air agency and Ecology has direct jurisdiction, excluding sources subject to EFSEC regulations. These counties are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, as well as statewide jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants covered under the SIP-approved applicability provisions of WAC 173-405-012, WAC 173-410-012, and WAC 173-415-012.

For the remaining counties and sources under the direct jurisdiction of local clean air agencies and sources under EFSEC jurisdiction, the statewide version of Chapter 173-400 WAC last approved by the EPA in 1995 will remain in the SIP. In addition, the corresponding local air

¹ Although the Washington statutes and regulations use the term “local authority,” these entities are now more commonly referred to as “local clean air agencies” or “local agencies” and that terminology will be used in this

agency regulations listed in 40 CFR part 52, subpart WW, will also apply. This dual set of federally-approved regulations in the SIP will continue to apply until the EPA has an opportunity to work with the state and local authorities to clarify whether the local agencies wish to rely on the newly revised provisions of Chapter 173-400 WAC or use local agency corresponding provisions as replacements in the SIP. Due to the complexity of working with regulations from seven different local air agencies, the EPA intends to take a phased approach in reviewing and updating the Washington SIP. However, in the short term, the EPA sees considerable value in proposing approval of updated regulations covering the eighteen counties under Ecology's direct jurisdiction, and the three source categories subject to Ecology's direct jurisdiction.

B. *WAC 173-400-030, Definitions.*

This section contains a list of terms and definitions used throughout Chapter 173-400 WAC. Many of the changes made since the EPA's last approval are clarifying or housekeeping in nature. For example, many of the definitions related to visibility protection were moved to WAC 173-400-117, *Special Protection Requirements for Federal Class I Areas*. Similarly, many of the definitions specific to the major source PSD and NNSR programs were relocated to WAC 173-400-720, *Prevention of Significant Deterioration Program* and WAC 173-400-810, *Nonattainment Area New Source Review Program* and will be acted on in separate actions. Ecology did not submit for approval the definition of "Toxic air pollutant (TAP)" or "toxic air contaminant" contained in a new subsection, WAC 173-400-030(91), because these pollutants are not criteria pollutants or EPA-identified precursors under section 110 of the CAA.

An important revision to WAC 173-400-030 is the inclusion of fine particulate matter (PM_{2.5}) definitions consistent with the EPA's definitions. On March 4, 2014, the EPA approved Chapter 173-476 WAC, *Ambient Air Quality Standards*, which includes PM_{2.5} and all other

criteria pollutants consistent with, or more stringent than, the Federal NAAQS (79 FR 12077). Inclusion of PM_{2.5} related definitions in WAC 173-400-030(70) and (71), along with the definition of criteria pollutants in WAC 173-400-030(21) and the NAAQS in WAC 173-400-030(49), supports this previous action and provides additional clarity in Chapter 173-400 WAC.

For a full description of the definitional changes, please see Ecology's submittal in the docket for this action. The EPA reviewed all of the changes and is proposing to determine that they are consistent with the definitions in 40 CFR 51.100 and meet the requirements for approval under section 110 of the CAA.

C. WAC 173-400-040, General Standards for Maximum Emissions.

Aside from numerous nonsubstantive or editorial changes, the main change to this section is the addition of three narrow exemptions from the twenty percent opacity standard which, as explained below, the EPA proposes to approve as either de minimis activities and/or activities that are appropriately bounded to limit emissions to de minimis levels.

The first exemption under WAC 173-400-040(2)(e)(i) relates to visible emissions reader certification testing. Ecology's analysis for this exemption explains that this exemption is required in order to allow for certification of readers under 40 CFR Part 60 Appendix A, Method 9 because the reader certification testing protocol requires opacity values above the opacity standard in WAC 173-400-040(2) as part of the testing process. Given the limited circumstances under which this exemption will apply, the EPA believes this visible emissions reader certification testing exemption is sufficiently narrow so as not to interfere with attainment or maintenance of the NAAQS and is therefore proposing to determine that it meets the requirements for approval under section 110 of the CAA.

The second exemption under WAC 173-400-040(2)(e)(ii) relates to military training exercises. Ecology's submittal explains that military training using obscurants is a necessary component of national defense and that the presence of obscurants emanating from a discrete source (such as a smoke pot) could be classified as a violation of the state opacity standard without an exemption. Ecology's submittal describes environmental assessments (EAs) performed by the Army that indicate that no offsite exceedance of a NAAQS would occur with adherence to the location usage criteria within the EAs. The submittal also explains that Ecology has included as limitations on the exemption specific requirements to control/reduce the offsite impacts from obscurant training based on the results of the EAs, such as the tracking of weather conditions so that a training is canceled if winds patterns change such that the obscurant could travel beyond the boundaries of the military site/reservation. Based on this analysis and the fact that the EPA has approved a similar exemption in another state (77 FR 2488, January 18, 2012), the EPA is proposing to determine that this military training exemption will not interfere with attainment or maintenance of the NAAQS and meets the requirements for approval under section 110 of the CAA.

The final new exemption under WAC 173-400-040(2)(e)(iii) relates to firefighter training. Ecology's submittal and analysis explains that the exemption implements a statutory provision allowing instructional fires for firefighter training, and that there are limitations and requirements in place that minimize this activity and the associated air impacts. Based on Ecology's submittal and the expected limited occurrence of the exempted activity, the EPA is proposing to determine that the exemption for firefighter training will not interfere with attainment and maintenance of the NAAQS and meets the requirements for approval under section 110 of the CAA.

In summary, the EPA has reviewed the revisions to the portions of WAC 173-400-040 submitted by Ecology and proposes to determine that they meet the requirements for approval under section 110 of the CAA. In so doing, the EPA notes that Ecology did not submit for EPA approval WAC 173-400-040(2)(c) and (d); WAC 173-400-040(3); WAC 173-400-040(5); and WAC 173-400-040(7), second paragraph. These sections are not currently part of the SIP because they are unbounded director's discretion provisions, not related to criteria pollutants regulated under title I of the CAA, not essential for meeting and maintaining the NAAQS, or not related to the requirements for SIPs under section 110 of the CAA. For more information on these provisions that Ecology did not include in its SIP submission, please see the EPA's proposed action on the Washington SIP (60 FR 9802, Feb. 22, 1995) and the final action (60 FR 28726, June 2, 1995).

D. WAC 173-400-050, Emission Standards for Combustion and Incineration Units.

The EPA approved WAC 173-400-050(1) through (3) into the SIP in 1993. The EPA's subsequent approval of Chapter 173-400 WAC in 1995 made no changes to these provisions. In this action, Ecology requested that the EPA approve minor wording changes and updates to WAC 173-400-050(1). Ecology also modified WAC 173-400-050(3), which had been previously disapproved by the EPA as an impermissible director's discretion provision (60 FR 28726, June 2, 1995), and has requested approval. As revised, WAC 173-400-050(3) contains criteria for modifying the default oxygen correction factor when appropriate, such as where the source is also subject to a New Source Performance Standard (NSPS) and that standard has a different oxygen correction factor. Ecology's revisions to subsection (3) provide adequately bounded requirements for the use of an alternative oxygen correction factor and satisfy previous

concerns. The EPA is therefore proposing to determine that the changes to WAC 173-400-050(1) and (3) meet the requirements for approval under section 110 of the CAA.

Ecology also requested that the EPA remove the previously approved WAC 173-400-050(2) from the SIP because it does not regulate criteria pollutants covered under title I of the CAA, is not essential for meeting and maintaining the NAAQS, and is not a requirement for SIPs under section 110 of the CAA. Ecology's submission explains that this subsection regulates emissions from incinerators that are not subject to regulation under the state solid waste incinerator rule or under Federal NSPS rules that have been adopted by the state, such as small incinerators at grocery stores and apartment buildings that are no longer common. Ecology also explains that total carbonyls are not a criteria air pollutant or an EPA-designated precursor to criteria pollutants and, consistent with previous EPA decisions, are therefore not appropriate for inclusion in a SIP. Ecology also states that, to the extent any of these sources remain and that the carbonyls subject to this limitation are volatile organic compounds (VOCs) or particulate matter (which are criteria pollutants or EPA-designated precursors), such emissions will be regulated as VOCs or particulate matter emissions from the source under other requirements of the SIP. For these reasons, the EPA agrees with Ecology that removal of this specific provision from the SIP will not affect attainment or maintenance of the NAAQS and is not otherwise needed to meet the requirements for SIPs under section 110 of the CAA and we therefore propose to approve the removal of WAC 173-400-050(2) from the SIP.

E. WAC 173-400-060, Emission Standards for General Process Units.

Ecology's changes to this section include an updated reference to EPA test methods and a minor word change. The EPA reviewed these changes and is proposing to determine that WAC 173-400-060 meets the requirements for approval under section 110 of the CAA.

F. WAC 173-400-070, Emission Standards for Certain Source Categories.

Ecology requested that the EPA replace WAC 173-400-070(1) through (6) currently in the SIP with updated versions, adopted as of November 28, 2012. The changes add silo burners as sources covered by the emission standards of this subsection, expand the areas for which additional requirements may be established (by removing the reference to sensitive areas in WAC 173-400-040(1)(d)), and include minor language clarifications and updated references. The EPA reviewed these changes and is proposing to determine that they meet the requirements for approval under section 110 of the CAA.

G. WAC 173-400-081, Startup and Shutdown and WAC 173-400-091, Voluntary Limits on Emissions.

Ecology's update to both of these sections consists of very minor wording changes from the versions last approved by the EPA. One change merits further discussion. WAC 173-400-091 authorizes Ecology to issue regulatory orders setting voluntary limits on the potential to emit of a source, which limits could be used to allow a source to avoid applicability of certain CAA "major" source programs. In 1995, the EPA approved this regulation as meeting the requirements for Federally-enforceable state operating permit programs set forth in 54 FR 27274 (June 28, 1989), with respect to criteria pollutants and pollutants regulated under the PSD program under section 110 of the CAA (as part of the SIP) and with respect to hazardous air pollutants under section 112(l) of the CAA (as part of Ecology's CAA section 112 program and not as part of the SIP). See 60 FR 9805 (proposed action); 60 FR 28726 (final action). Ecology has revised WAC 173-400-091 to delete the language stating that such orders "shall be federally enforceable upon approval of this section as an element of the Washington state implementation plan." This is consistent with a Federal court decision vacating the requirement that limits be

Federally-enforceable to be effective as a means of limiting a source's "potential to emit" for purposes of avoiding being considered a major source under the PSD or major NNSR program. Because Ecology has requested EPA approval of this revised provision in the Washington SIP, however, limits on potential to emit such pollutants created under WAC 173-400-091 will continue to be Federally-enforceable, notwithstanding the revised language in Ecology's rule. See Release of Interim Policy on Federal Enforceability of Limitations on Potential to Emit, by John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation and Robert I. Van Heuvelen, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, dated January 22, 1996. As with our previous approval, we are approving the revised version for purposes of the Washington SIP only with respect to criteria pollutants and pollutants regulated under the PSD program. In sum, the EPA reviewed the changes to these regulations and we are proposing to determine that they meet the requirements for approval under section 110 of the CAA.

H. WAC 173-400-100, Registration Program.

The registration program was approved into the SIP in 1993 under WAC 173-400-100. Ecology has since significantly revised this section and the registration program, which is now contained in WAC 173-400-099 through -104. Ecology has not submitted these sections for approval and has requested that the version of WAC 173-400-100 currently in the SIP be removed. Ecology's submittal explains that, unlike the version of WAC 173-400-100 currently in the Federally-approved SIP, Washington's current registration regulations (WAC 173-400-099 through -104) no longer are a means of determining the applicability of Washington's new source review permitting requirements. Moreover, the registration provisions do not impose air pollution control requirements on sources or implement or enforce Federal standards. Based on

the EPA's review of the section and Ecology's explanation for its request, we are proposing to remove WAC 173-400-100 from the SIP.

I. WAC 173-400-105, Records, Monitoring, and Reporting.

WAC 173-400-105 contains provisions implementing the air emissions reporting requirements and source surveillance requirements in 40 CFR part 51, subparts A and K. Revisions to this section update references to pollutants (requiring the inclusion of PM_{2.5}, oxides of nitrogen, and ammonia in emission inventories), test methods, and continuous emissions monitoring requirements. Revisions also clarify the existing exemption for monitoring required of sources subject to Federal standards, such as the NSPS or National Emissions Standards for Hazardous Air Pollutants (NESHAPS). A key change is the addition of detailed requirements for continuous emission monitoring systems (CEMs) that are not required by NSPS, NESHAPS or other identified Federal standards. The EPA reviewed the changes to WAC 173-400-105 and we are proposing to determine that the changes meet the requirements for approval under section 110 of the CAA and 40 CFR part 51, subparts A and K.

J. Minor New Source Review: WAC 173-400-110; WAC 173-400-111; WAC 173-400-112; WAC 173-400-113; WAC 173-400-036; and WAC 173-400-560.

Ecology's minor NSR program² was last approved into the SIP in 1995. Since then, Ecology has revised the applicability provisions, restructured the regulations, made many clarifying revisions, and made some substantive revisions. Together, WAC 173-400-110 through -113 are the starting point for any source seeking to construct a new source or modify an existing source. Specific provisions in these sections direct sources constructing a "major" source or making a "major modification" to a "major" source in an attainment or unclassifiable

² Ecology's NSR rules refer to the approval document as an "order" or "order of approval" rather than a permit and an application as a "notice of construction application" rather than a permit application.

area to also comply with the requirements of WAC 173-400-700 through -750 (PSD) and in a nonattainment area to also comply with the requirements of WAC 173-400-800 through -860 (major NNSR). See, for example, WAC 173-400-110(1)(d). As discussed above, although Ecology's submittal also includes regulations covering the PSD and the major NNSR permitting programs, the EPA intends to address these major source NSR program regulations in separate actions. Accordingly, the EPA's review of and proposed approval of the revised WAC 173-400-110 through -113, 173-400-036, and 173-400-560 in this action is not a determination that these revised regulations meet requirements for approval of a SIP-approved PSD permitting program (40 CFR 51.166) or a SIP-approved major NNSR permitting program (40 CFR 51.165).

1. Applicability

As discussed in Ecology's SIP submittal, the minor NSR rules approved by the EPA in 1995 required 1) all new sources listed as being required to register with the state or the local clean air agency and 2) existing sources being modified and having emission increases to undergo NSR and receive an order of approval prior to construction. State law was amended in 1996 to require Ecology to develop a listing of de minimis emission sources which would not require pre-construction review and approval. Specifically, RCW 70.94 .152(11) states, "[n]o person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds." RCW 70.94 .152(12) adds, "[f]or purposes of this section, 'de minimis new sources' means new sources with trivial levels of emissions that do not pose a threat to human health or the environment."

In response to that statutory directive, Ecology revised WAC 173-400-110 to exempt from review de minimis emission sources in two different ways: 1) through a list of emission units and activities determined to have de minimis emissions, and 2) through annual emissions threshold levels determined to be de minimis for non-listed emission units and activities. Ecology's annual emission exemption thresholds are equal to five percent of the PSD significance levels defined in 40 CFR 52.21(b)(23), as they existed in 1997. In its submittal, Ecology explains that its annual emissions exemption thresholds are lower than the levels in the SIPs of 12 other states it reviewed in developing its thresholds, and also lower than the annual emissions exemption thresholds in the EPA's rule for New Sources and Modifications in Indian Country (Tribal NSR rule) at 40 CFR 49.153(b)(3), Table 1. Ecology also compared its list of exempted emission units and activities with those of 12 other states and the EPA's Tribal NSR rule and found that its list of exempt units and activities is similar to the lists of other states and in the Tribal NSR rule, although each state's list reflects differences in the mix of sources and priorities of the state. Ecology noted that where a particular exempt unit or activity had a size cutoff to be considered de minimis, Ecology's cutoffs were often lower than for comparable emission units and activity exemptions in the SIPs of other states.

In addition to comparing its exemption list and thresholds to those of other states with SIP-approved minor NSR programs and with the Tribal NSR rule, Ecology also conducted modeling to demonstrate that its list of exempt emission units and activities, and its exemption thresholds would not cause or contribute to an exceedance of the NAAQS. Ecology's justification and modeling is also supported by the EPA's ambient air quality monitoring data for the State of Washington. This information shows that, despite increasingly more stringent NAAQS over the years, Washington has remained in attainment for all criteria pollutants with

the exception of one area designated as nonattainment for PM_{2.5} in 2009 that has since met the standard.³

2. Permit Processing and Issuance

Ecology has consolidated in WAC 173-400-111 many of the permit processing and issuance criteria the EPA previously approved into the SIP and that were previously contained in WAC 173-400-110, WAC 173-400-112, and WAC 173-400-113. This section now contains provisions for determining the completeness of applications, criteria for approval of notice of construction approvals, timeframes for issuing approvals, appeals, and revisions. The EPA views this consolidation of the permit issuance and processing procedures as administrative, clarifying, and non-substantive.

3. Minor NSR in Nonattainment Areas

The EPA last approved this section on June 2, 1995 (60 FR 28726). The current version of WAC 173-400-112, adopted in 2012, remains substantively the same for minor sources in nonattainment areas. The most significant change is that Ecology moved the major NNSR requirements to WAC 173-400-800 through -850 in order to provide clarity and to more easily incorporate changes to the EPA program, including implementation of the 2002 NSR Reform requirements (67 FR 80186, December 31, 2002). As discussed above, the EPA intends to evaluate WAC 173-400-800 through -850 in a separate proposed action in the near future. However, in the interim, we believe there is significant value in proposing approval of the

³The Tacoma-Pierce County fine particulate matter (PM_{2.5}) nonattainment area (Tacoma-Pierce County) was designated for violating the 24-hour PM_{2.5}NAAQS established in 2006 (71 FR 61144, October 17, 2006). For this area, elevated 24-hour PM_{2.5} levels were driven by residential wood smoke emissions (74%) rather than industrial emissions (2%). In part due to community outreach, more stringent controls on residential wood smoke, and fleet turnover with cleaner cars, Tacoma-Pierce County met the 24-hour PM_{2.5} NAAQS based on 2009-2011 data (77 FR 53772, September 4, 2012), as well as more recent 2010-2012 data (78 FR 57503, September 19, 2013).

revised WAC 173-400-112 so that the federally enforceable SIP will contain the most up to date requirements for minor sources in nonattainment areas.

4. Minor NSR in Attainment and Unclassifiable Areas

Most of the revisions submitted for approval in WAC 173-400-113 are clarifying in nature, but do not substantively alter the underlying provisions previously approved by the EPA. For example, Ecology's rules still require that a new source or modification will employ "best available control technology" for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification, which goes beyond the minimum requirements for a minor NSR program in 40 CFR 51.160.

We note that Ecology did not submit as part of its SIP revision the second sentence in subsection (3), which relies on impact levels in Table 4 of this regulation as a basis for concluding that a proposed new source or modification does not cause or contribute to a violation of the NAAQS. The language in this sentence is similar to language that was recently vacated by a court and repealed by the EPA in the EPA's PSD regulations with respect to PM_{2.5}. See *Sierra Club v. EPA*, 703 F.3d 458 (D.C. Cir. 2013); 78 FR 73698 (December 9, 2013). Ecology explained that its decision not to submit this sentence in subsection (3) is to ensure that its SIP is consistent with the court decision.

In subsection (4), Ecology has included PM_{2.5} significance levels for determining if impacts from a new major source or major modification to a major source in an attainment or unclassifiable area will cause or contribute to a violation of an ambient air quality standard in a nearby nonattainment area. Ecology's significance levels contained in WAC 173-400-113(4)(a) are the same as the EPA's significance levels contained in 40 CFR 51.165(b)(2). Ecology also

added WAC 173-400-113(4)(b) to implement the emission reduction offset provisions contained in 40 CFR 51.165(b)(3).

5. Relocation of Portable Sources

The state regulations regarding portable sources were originally part of the SIP-approved regulations under WAC 173-400-110(5). Ecology moved these provisions to a stand-alone section, WAC 173-400-036. Portable sources that meet the requirements of this section may, without obtaining a site-specific or permitting authority-specific order of approval, relocate and operate in any jurisdiction in which the permitting authority has adopted this section by reference. Permitting authority participation in the inter-jurisdictional provisions of this section is optional. Before a source can move, it must: already have an approved notice of construction order identifying the emission units as a portable source; submit a relocation notice and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location; submit the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the preceding year; and limit operations to one year or less. Importantly, a source moving into nonattainment area that emits a pollutant or precursor for which the area is classified as nonattainment must obtain a site-specific order of approval and may not rely on this provision. In addition, major stationary sources must comply with all otherwise applicable PSD requirements.

6. General Orders of Approval

WAC 173-400-560 provides an alternative path to meeting minor NSR permit obligations for certain new sources, fulfilling the requirements contained in WAC 173-400-110, 173-400-111, 173-400-112, or 173-400-113. Under this provision, Ecology is authorized to issue a

general order of approval that would authorize construction or modification of a specific type of emission unit or source, subject to specified terms and conditions. The general order of approval must identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and include terms and conditions under which the owner or operator agrees to install and/or operate the covered emission unit or source.

Ecology's SIP revision submittal explains that it intends to use this authority for source categories where it has had considerable experience in issuing approvals, where "best available control technology" (BACT) emission controls have not been changing or anticipated to change in the near future, and the use of BACT emission controls will protect the NAAQS. To date, Ecology has issued general orders of approval for dairy anaerobic digesters, concrete batch plants, gas-powered emergency electric generators, rock crushers, small water heaters and steam generating boilers, auto body shops, and asphalt plants. Importantly, applying for a general order of approval is not an option if the emission unit or source is part of a major stationary source or major modification subject to the requirements of WAC 173-400-700 through -750 or WAC 173-400-800 through -860, if the emission unit or source triggers applicability of the operating permit program under Chapter 173-401 WAC, or if the new source or modification would require modification of an existing operating permit. These limitations are designed to ensure that the applicant does not divide a project into smaller projects to avoid major NSR permitting, or does not avoid additional requirements found in WAC 173-401, *Air Operating Permits*.

7. Summary

The EPA has reviewed the revisions to WAC 173-400-110 to 113, -036, and 560 as well as the information submitted by Ecology in its submittal. Based on our review, we are proposing to determine that these provisions, together with the public notice requirements in WAC 173-

400-171 discussed below, meet the requirements for an approvable minor NSR program under 110 of the CAA and 40 CFR 51.160, 51.161, and 51.163. The EPA also notes that Ecology is not submitting for approval into the SIP several provisions in WAC 173-400-110 through 113, -036, and -560, primarily related to toxic air pollutants, because these sections are not related to regulation of criteria pollutants, are not essential for meeting and maintaining the NAAQS, or are not otherwise required under section 110 of the CAA. A full list of the sections not submitted for approval into the SIP is included in the docket for this action.

K. WAC 173-400-116, Increment Protection.

As previously discussed, the EPA intends to evaluate and propose a determination on the major source permitting programs, PSD and major NNSR, in separate actions. Because WAC 173-400-116 implements the PSD increment protection requirements, the EPA will address this section in a separate action as part of our evaluation of Ecology's PSD program contained in WAC 173-400-700 through -750.

L. WAC 173-400-117, Special Protection Requirements for Federal Class I Areas.

WAC 173-400-117 applies only to major sources. The EPA intends to address this section in a separate action as part of our evaluation of Ecology's PSD program contained in WAC 173-400-700 through -750.

M. WAC 173-400-118, Designation of Class I, II, and III Areas.

This new section codifies the designation of Class I areas previously approved into the Washington SIP in WAC 173-400-030, *Definitions*. These areas are the Alpine Lakes Wilderness, Glacier Peak Wilderness, Goat Rocks Wilderness, Adams Wilderness; Mount Rainier National Park, North Cascades National Park, Olympic National Park, Pasayten Wilderness, and Spokane Indian Reservation. WAC 173-400-118 also lays out procedures for

redesignation of Class I, II, and III areas consistent with the EPA requirements contained in 40 CFR 51.166(g). The EPA reviewed this new section and we are proposing to determine that it meets the requirements for approval under section 110 of the CAA and 40 CFR 51.166(g).

N. WAC 173-400-131, Issuance of Emission Reduction Credits.

This new section implements a program to issue emission reduction credits useable for offsets required by the NNSR permitting program. The EPA will address this section in a separate action as part of our evaluation of Ecology's NNSR program contained in WAC 173-400-800 through -860.

O. WAC 173-400-136, Use of Emission Reduction Credits (ERC).

This new section implements the requirements for the use of emission reduction credits, including their use as offsets required by the NNSR permitting program and other uses allowed in Chapter 173-400 WAC. The EPA will address this section in a separate action as part of our evaluation of Ecology's NNSR program contained in WAC 173-400-800 through -860.

P. WAC 173-400-151, Retrofit Requirements for Visibility Protection.

This section implementing the Best Available Retrofit Technology (BART) program for existing stationary sources was last approved by the EPA in 1995. Ecology has revised the rule to address a number of inconsistencies with the requirements of 40 CFR part 51, sections 51.301 – 306, in particular, to align the definition of “existing stationary facility” (previously in WAC 173-400-030(26) and now in WAC 173-400-151) with the Federal definition in 40 CFR 51.301 by limiting BART applicability to the 26 listed source types and categories, and to those facilities that came into existence between 1962 and 1977. Because the version of the rule currently in the SIP had not previously been applied to any source, revising it to be consistent with the Federal definition had no substantive effect on the actual implementation of the BART process or

defining which sources could be potentially subject to BART in Washington. This revision was used to develop the 2010 Regional Haze State Implementation Plan for Washington. The EPA reviewed these changes to the BART program and we are proposing to determine that they meet the requirements for approval under section 110 of the CAA and 40 CFR part 51, subpart P, Protection of Visibility.

Q. WAC 173-400-171, Public Notice.

The section establishes procedures for informing the public of the receipt of Notice of Construction applications and on the criteria that would result in a public notice and public comment period on the permitting agency's proposed action. The version of this regulation currently approved in the SIP limits the types of Notice of Construction applications that are subject to public notice and comment to those that would authorize emissions above certain thresholds. Since then, Ecology has broadened its public notice and comment requirements so that notice of receipt of each Notice of Construction application is posted on the permitting authority's website. In addition, to requiring notice and a 30-day public comment period on Notice of Construction applications that would authorize emissions above certain thresholds, this provision now also requires notice and a 30-day public comment period on any application for which a written request for public notice and comment was received as a result of the internet posting. In addition, this section requires notice and public comment for certain actions, such as use of a modified or substituted air quality model, other than a guideline model in 40 CFR part 51, appendix W; orders issued under WAC 173-400-091 that establish limitations on a source's potential to emit; and any application or other action for which the permitting authority determines that there is significant public interest. The EPA reviewed these changes to the public participation procedures and we are proposing to determine that they meet the

requirements for approval under section 110 of the CAA, including for minor NSR (see 40 CFR 51.161), Federally-enforceable state operating permit programs (54 FR 27274, June 28, 1989), and stack height procedures (40 CFR 51.164). As with the EPA's review and proposed action on WAC 173-400-110 through -113, our review and proposed action on WAC 173-400-171 in this notice is not a determination that this revised regulations meet requirements for approval under the EPA's regulations for SIP-approved PSD permitting programs (40 CFR 51.166) or SIP-approved major NNSR permitting programs (40 CFR 51.165).

R. WAC 173-400-175, Public Information.

This new section provides that, subject to certain exceptions, all information, including copies of notice of construction applications, orders, and applications to modify orders are available for public inspection. As provided in RCW 70.94.205 information that relates "to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor" can be claimed as exempt from disclosure except to the extent such information is ambient air quality data or emission data. The EPA reviewed this new section and is proposing to determine that it meets the requirements for approval under section 110 of the CAA and 40 CFR 51.116(c) and 51.230(f).

S. WAC 173-400-200, Creditable Stack Height and Dispersion Techniques.

This section last modified effective February 10, 2005, makes only minor wording clarifications from the version previously approved into the SIP. The EPA reviewed these minor changes and is proposing to determine that they meet the requirements for approval under section 110 of the CAA, including the stack height provisions in 40 CFR 51.118 and the stack height procedures in 40 CFR 51.164.

IV. The EPA's Proposed Action

Consistent with the discussion above, the EPA proposes to approve many of the submitted SIP provisions and to take action on the remaining provisions separately, as discussed below. This action, if finalized, will result in changes to the Washington SIP in 40 CFR part 52, subpart WW.

A. Rules to Approve into the SIP

The EPA proposes to approve into the SIP at 40 CFR part 52, subpart WW, the Ecology regulations listed in Table 1. It is important to note that Ecology did not submit for approval into the SIP certain provisions of Chapter 173-400 WAC, generally because they are not related to the criteria pollutants regulated under title I of the CAA, are not essential for meeting and maintaining the NAAQS, or are not related to the requirements for SIPs under section 110 of the CAA. These exceptions are noted in the "Explanation" column of the table. The EPA's review of and proposed approval of the revised WAC 173-400-110 through -113, 173-400-036, 173-400-171, and 173-400-560 in this action is not a determination that these revised regulations meet requirements for major sources such as a SIP-approved PSD permitting program (40 CFR 51.166), a SIP-approved major NNSR permitting program (40 CFR 51.165), or a SIP-approved visibility program (40 CFR 51.307). These regulations are marked with asterisks in Table 1. The EPA will evaluate these regulations for consistency with the requirements for major NSR permitting programs and visibility in a separate action.

Table 1: Washington State Department of Ecology Regulations for Proposed Approval

State Citation	Title/Subject	State Effective Date	Explanation
Chapter 173-400 WAC, General Regulations for Air Pollution Sources.			
173-400-020	Applicability.	12/29/12	
173-400-030	Definitions.	12/29/12	Except: 173-400-030(91).

173-400-036*	Relocation of Portable Sources.	12/29/12	
173-400-040	General Standards for Maximum Emissions.	4/1/11	Except: 173-400-040(2)(c); 173-400-040(2)(d); 173-400-040(3); 173-400-040(5); 173-400-040(7), second paragraph.
173-400-050	Emission Standards for Combustion and Incineration Units.	12/29/12	Except: 173-400-050(4); 173-400-050(5).
173-400-060	Emission Standards for General Process Units.	2/10/05	
173-400-070	Emission Standards for Certain Source Categories.	12/29/12	Except: 173-400-070(7); 173-400-070(8).
173-400-081	Startup and Shutdown.	4/1/11	
173-400-091	Voluntary Limits on Emissions.	4/1/11	
173-400-105	Records, Monitoring, and Reporting.	12/29/12	
173-400-110*	New Source Review (NSR) for Sources and Portable Sources.	12/29/12	Except: 173-400-110(1)(c)(ii)(C); 173-400-110(1)(e); 173-400-110(2)(d); The part of WAC 173-400-110(4)(b)(vi) that says, <ul style="list-style-type: none"> “not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC,”; The part of 400-110 (4)(e)(iii) that says, <ul style="list-style-type: none"> “where toxic air pollutants as defined in chapter 173-460 WAC are not emitted”; The part of 400-110(4)(e)(f)(i) that says, <ul style="list-style-type: none"> “that are not toxic air pollutants listed in chapter 173-460 WAC”; The part of 400-110 (4)(h)(xviii) that says, <ul style="list-style-type: none"> “, to the extent that toxic air pollutant gases as defined in

			<p>chapter 173-460 WAC are not emitted”;</p> <p>The part of 400-110 (4)(h)(xxxiii) that says,</p> <ul style="list-style-type: none"> • “where no toxic air pollutants as listed under chapter 173-460 WAC are emitted”; <p>The part of 400-110(4)(h)(xxxiv) that says,</p> <ul style="list-style-type: none"> • “, or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>The part of 400-110(4)(h)(xxxv) that says,</p> <ul style="list-style-type: none"> • “or $\leq 1\%$ (by weight) toxic air pollutants”; <p>The part of 400-110(4)(h)(xxxvi) that says,</p> <ul style="list-style-type: none"> • “or $\leq 1\%$ (by weight) toxic air pollutants as listed in chapter 173-460 WAC”; <p>400-110(4)(h)(xl) , second sentence;</p> <p>The last row of the table in 173-400-110(5)(b) regarding exemption levels for Toxic Air Pollutants.</p>
173-400-111*	Processing Notice of Construction Applications for Sources, Stationary Sources and Portable Sources.	12/29/12	<p>Except:</p> <p>173-400-111(3)(h);</p> <p>173-400-111(3)(i);</p> <p>The part of 173-400-111(8)(a)(v) that says,</p> <ul style="list-style-type: none"> • “and 173-460-040,”; <p>173-400-111(9).</p>
173-400-112*	Requirements for New Sources in Nonattainment Areas -- Review for Compliance with Regulations.	12/29/12	<p>Except:</p> <p>173-400-112(8).</p>
173-400-113*	New Sources in Attainment or Unclassifiable Areas -- Review for Compliance with Regulations.	12/29/12	<p>Except:</p> <p>173-400-113(3), second sentence.</p>
173-400-118	Designation of Class I, II, and III Areas.	12/29/12	

173-400-151	Retrofit Requirements for Visibility Protection.	2/10/05	
173-400-171*	Public Notice and Opportunity for Public Comment.	12/29/12	Except: The part of 173-400-171(3)(b) that says, <ul style="list-style-type: none"> “or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173-460 WAC”; 173-400-171(12).
173-400-175	Public Information.	2/10/05	
173-400-200	Creditable Stack Height and Dispersion Techniques.	2/10/05	
173-400-560*	General Order of Approval.	12/29/12	Except: The part of 173-400-560(1)(f) that says, <ul style="list-style-type: none"> “173-460 WAC”.

B. Rules to Remove from the SIP

For the reasons discussed in section H above, the EPA is proposing to remove from the SIP 173-400-100 WAC, originally adopted September 20, 1993, and which has since been revised.

C. Rules on which No Action is Taken

As previously discussed, the EPA intends to evaluate and propose a determination on the major source permitting programs, major NNSR and PSD, in separate actions. Table 2 lists the rules upon which the EPA is taking no action at this time.

Table 2: Washington State Department of Ecology Regulations upon which the EPA is Taking No Action at this Time.

State Citation	Title/Subject
173-400-116	Increment Protection.
173-400-117	Special Protection Requirements for Federal Class I Areas.
173-400-131	Issuance of Emission Reduction Credits.
173-400-136	Use of Emission Reduction Credits (ERC).
173-400-700	Review of Major Stationary Sources of Air Pollution.

173-400-710	Definitions.
173-400-720	Prevention of Significant Deterioration (PSD).
173-400-730	Prevention of Significant Deterioration Application Processing Procedures.
173-400-740	PSD Permitting Public Involvement Requirements.
173-400-750	Revisions to PSD Permits.
173-400-800	Major Stationary Source and Major Modification in a Nonattainment Area.
173-400-810	Major Stationary Source and Major Modification Definitions
173-400-820	Determining if a New Stationary Source or Modification to a Stationary Source is Subject to these Requirements.
173-400-830	Permitting Requirements.
173-400-840	Emission Offset Requirements.
173-400-850	Actual Emissions Plantwide Applicability Limitation (PAL).
173-400-860	Public Involvement Procedures.

In addition, as discussed above, the EPA's proposed approval of WAC 173-400-110 through 113, -036, -560, and -171 in this Federal Register publication is not a determination that these revised regulations meet requirements for approval under the EPA's regulations for SIP-approved PSD permitting programs (40 CFR 51.166) or SIP- approved major NNSR permitting programs (40 CFR 51.165). The EPA will evaluate WAC 173-400-110 through 113, -036, -560, and -171 for consistency with the requirements for major NSR permitting programs and visibility in a separate action.

D. Scope of Proposed Action

As previously discussed with respect to WAC 173-400-020, *Applicability*, the EPA's proposed approval for this action is limited to only those counties or sources where the Department of Ecology has direct jurisdiction. This proposed action excludes sources subject to EFSEC or local clean air agency jurisdiction. The counties where Ecology has direct jurisdiction are: Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman

counties. The EPA also notes that under the SIP approved provisions of WAC 173-405-012, WAC 173-410-012, and WAC 173-415-012, Ecology has statewide, direct jurisdiction for kraft pulp mills, sulfite pulping mills, and primary aluminum plants.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the state, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA nonetheless provided a consultation opportunity to the Puyallup Tribe in a letter dated February 25, 2014. The EPA did not receive a request for consultation.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 26, 2014.

Dennis J. McLerran,
Regional Administrator,
Region 10.

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